IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 4-10-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.49741 of 2006

and

M.P.Nos.1 of 2006 and 1 and 2 of 2007

Indian Institute of Technology
- Madras
Rep. By its Registrar
Chennai 600 036. .. Petitioner

vs

1.The Presiding Officer
Principal Labour Court
Chennai
2.R.Venkatramani
3.R.Ganesan
4.K.Radhakrishnan
5.G.Thangachan
6.S.Subramanian
7.A.Subbraraidu
8.G.Devaiah
9.R.Mani
10.M.Chokkalingam
11.K.Madhavaiah
12.M.Nagaiah
13.T.D.George
14.K.R.Panchaksharam
15.Narayanasamy
16.K.Shanmugam
17.A.K.Gopalakrishnan
18.P.Subramanian
19.M.R.Raman
20.N.Rajamani
21.N.Selvam
22.G.Venkaiah
23.M.P.Veeraiah
24.V.Narayanasamy
25.K.C.Harikrishnan
26.M.P.Balakrishnan
27.K.Venkataiah
28.K.Muniappan
29.U.L.Krishnan
30.M.Selvam
31.M.Kulandaivelu

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32.Kunhiraman
33.M.Mani
34.S.C.Elumalai
35.P.Ramsingh
36.M.Chinnaiah
37.M.SEthumadhavan
38.P.Murugaian
39.N.Subramanian
40.D.Nandagopal
41.V.V.Jose
42.M.V.Viswanathan
43.M.Kasinathan
44.G.Mani
45.E.Manoharan
46.P.Sethuraman
47.Esakiel Selvakumar
48.M.Krishnamoorthy
49.A.Veerapandian
50.C.V.Balachandran
51.V.Rajeswari
52.K.Ganesan
53.U.Sudhakaran
54.K.Rani
55.S.Joseph
56.Fathima
57.M.Arumuga Nainar
58.M.Thirupal
59.L.Dasarathan
60.K.Thirumalai Reddy
61.A.Munusamy
62.M.C.Subbaiah
63.M.Arivalagan
64.V.K.Govindankutty
65.A.Velankanni
66.V.Thirunavukkarasu
67.J.Balasubramani
68.Jegadeesan
69.P.Obaiah
70.N.Chinnaiah
71.P.R.Rajaiah
72.M.Shanmugham
73.M.V.Mathialagan
74.P.Annadurai
75.R.Veeraswamy
76.A.William George Stephen
77.K.Kanaga Sundaram
78.P.Bakthavatsalam
79.C.Kasthuri
80.P.Ramaswamy
81.A.K.Govindasamy
82.P.Visalakshi
83.A.Muthu
84.S.P.Muthu
85.N.Murthy

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86.R.Natarajan
87.M.Subbiah
88.M.Malakondaiah
89.G.Sethuraman
90.R.Vanajakshi
91.D.Victor David
92.M.Ellaiah
93.Krishnamma
94.K.Venkatachalam
95.Santhamma
96.R.Narashimalu
97.A.Krishnankutty
98.N.Mangudi
99.P.Narayanan
100.P.Muniammal
101.M.Jayalakshmi
102.M.Balamma
103.A.Ramachandran
104.R.Ganesan
105.T.Sarojini
106.A.Suresh
107.M.Vellaisamy
108.V.Shankar
109.C.Muniyan
110.M.Radhakrishnan
111.C.Krishnan
112.S.Rajamani
113.M.Sivalingam
114.V.Alagesan
115.S.Sundaram
116.P.Lingaiah
117.D.Venkataiah
118.S.Thaiyumanavan
119.S.Devadass
120.P.Venkataramaiah
121.T.Muruganandam
122.M.Obaiah
123.S.Chellaiah
124.R.Jayaraman
125.M.Subramanian
126.K.Arjunan
127.N.Mani
128.D.Chinna Ponnu
129.M.Ganesan
130.J.Anthony
131.G.Baskarareddy
132.V.S.Balan
133.T.Laxmanan
134.C.Nagappan
135.N.Varadhan
136.K.K.Viswambaran
137.V.K.Parameswaran
138.K.Rangasamy
139.M.Ramaiah

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140.C.Subbarayan
141.N.Veeramuthu
142.K.P.Kalidasan
143.G.Arumugam
144.K.Raju
145.M.Nandakumar
146.P.Krishnan
147.A.Karuppiah
148.M.Kondaiah
149.T.Guruviah
150.M.Rajagopal
151.P.Krishnankutty
152.C.Vaidyanathan
153.K.Varadhan
154.N.Ranganathan
155.M.Ramalingam
156.M.Ganesan
157.R.Jayaraman
158.K.Shankaran
159.A.Subramaniam
160.V.M.Balan
161.K.Narayanan
162.R.Karunanidhi
163.V.Moses Theodore
164.M.Pandian
165.K.Venkatarangan
166.S.Sivadoss
167.V.Shankaranarayanan
168.R.C.Sekar
169.D.Thangavelu
170.M.Sivaraman
171.M.P.Sukumaran
172.R.Chinnaiah
173.S.Francis
174.S.Francisnathan
175.S.Kannayan
176.M.Gurunathan .. Respondents

RR.2 TO 176 C/o.Thiru.K.Shanmugakani
Advocate, 123, Additional Law Chambers,
Chennai 104.

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Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records relating to the order dated 31.3.2006 of the first respondent herein in Claim Petition Nos.274 to 430 of 1999, 389 to 395 of 2002, 397 of 2002, 400 of 2002, 407 to 409 of 2002 and 411 to 416 of 2002 and quash the same.

For Petitioner : Mr.R.Parthiban
For Respondents : Mr.K.Shanmugakani
for RR2 to 176

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ORDER

Challenge is made to an order of the Labour Court, Madras, made in Claim Petition Nos.274 to 430 of 1999, 389 to 395, 397, 400, 407 to 409 and and 411 to 416 of 2002 in favour of the respondents 2 to 176 herein holding that they are entitled for the overtime wages during the relevant period from 1993 to 1999 and also granting other reliefs.

2.The Court heard the learned Counsel on either side. The affidavit in support of the petition along with the grounds are also looked into.

3.The respondents 2 to 176 along with others made all those claim petitions alleging that they were all working as Server, Cleaner/Washer, Cook, Servant maid, Gardener, Grinder and Distribution Attendant respectively from 1963, 1964, 1965, etc., with the petitioner institute; that they have been assigned to work at the Students' Hostel, situated within the Institute campus; that the petitioner establishment is a Residential Education Institution; that it caters to the needs of the students; that it is a condition precedent that all the students joining the petitioner's establishment should continue their studies by staying there; that there are about 3000 students; that the Cooks report for duty by 5.00 A.M., and all other workers report duty at 6.00 A.M.; that after completing the service, the workers finish a day's work at 8.30 P.M., and thus, they have been working for more than 14.30 hours per day; that as per the letter from the Government of India dated 27.1.1993, all the employees should work for 48 hours per week not exceeding 10 hours per day, and however, due to the exigencies of work, if an employee was required to put in more than 48 hours of work per week, he should be entitled for payment of overtime allowance as per Rules; that they have been doing overtime work; that under the circumstances, they are entitled for extra duty allowance, and hence, it has got to be ordered for the period from 1993 to 1999 along with interest at 18% per annum which they are entitled.

4.The respondent in the claim petitions who is the writ petitioner herein, resisted the petitions stating that all the petitions are not maintainable in law; that the Institution has nothing to do; that they are not the employees of the I.I.T.; that they are under exclusive control and management of a body called Hostel Management; that the Hostel Management was in charge of the affairs of the Hostel and was the recruiting and discharging authority; that it also fixes the ranges of pay, and rules have also been framed by the Hostel Management in regard to the terms and conditions of the employment of the hostel staff; that under the circumstances, the I.I.T. has nothing to do with the terms and conditions provided by the Hostel Management; that further, the administration on the terms of employees and conditions of service of hostel employees in recruitment, selection, probation and confirmation of employees, salaries and allowances of employees, duties and responsibilities of the employees, leave Rules, discipline of employees, grievances, transfer, promotion/review of employees fringe and retirement benefits and training of employees were done only by the Hostel Management; that the I.I.T. has nothing to do with the same; that the working hours of the Mess is stipulated in Rule 17; and that it is not correct to state that they have been working beyond the stipulated time. It is also further added that

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originally, the matter was agitated; that it has also been found by the Division Bench of this Court that they are not the workers of the I.I.T., but workers of the Hostel Management; that the Government of India's circular can be applied to the present facts of the case; and that under the circumstances, all the petitions were to be dismissed.

5.All the claim petitions were taken up for enquiry by the first respondent Labour Court, and both the parties were given opportunity to adduce evidence both oral and documentary. The Labour Court took its view and granted the relief which is the subject matter of challenge before this Court.

6.Advancing his arguments on behalf of the writ petitioner, who challenges the order of the Labour Court, the learned Counsel would submit that firstly, in the instant case, all these respondents 2 to 176 were actually the employees under the Hostel Management; that they were all under the exclusive control and management of the body called Hostel Management; that the I.I.T. has nothing to do with the same; that secondly, their services were all governed by the Rules framed by the Hostel Management in which the I.I.T. has no role to play; that originally, the Association of the hostel employees referred the matter to the Assistant Commissioner of Labour on 27.9.1993; that the said Association was represented by its Secretary; that four disputes were raised in the representation; that one of the disputes was relating to the grant of overtime wages; that the Hostel Management gave its elaborate report; that it was also dealt with; that a detailed explanation was given by the I.I.T.; that further, the I.I.T. also filed a separate statement; that the final conciliation meeting was also held; that the conciliation failure report was sent on 7.7.1995; that the Government issued a G.O. refusing to refer the four issues for adjudication; that aggrieved over the same, the Association filed WP No.15215/1998 to direct the Government to refer the disputes raised on 27.9.1993; that though the said writ petition was filed by the employees' Union, the same was withdrawn by the Association; but, all the factual facts were suppressed in the present claim petitions; that while that writ petition was pending, fresh representations were made by the Association to the Conciliation Officer; that in the said representation, they have sought to prosecute the management for unfair labour practices; that a reply was given by the Chairman of the Hostel Management; that while the petition for prosecution was pending, the Association also raised fresh dispute before the Assistant Commissioner of Labour of the State; that one of the issues was regarding the overtime wages; that the conciliation failure report was sent; that the Government passed orders referring two issues for adjudication; that it has also passed a separate order refusing to refer three issues; that in that order, it has been clearly stated that as far as the issue of overtime wages was concerned, the workmen had not pressed this demand and have given up their claim for overtime wages; that under the circumstances, that issue was not referred; that the said order was not challenged by the workmen at any stage; that all these facts were suppressed in the claim petitions; that the two issues which were referred for adjudication, were taken on the file of the Industrial Tribunal as I.D.No.99 of 2000; that it is yet pending; that after conclusion of all these proceedings, the workmen filed the claim petitions claiming overtime wages from 1993 to 1999; that the said claim petitions were dismissed as

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not pressed; and that the management filed a detailed counter.

7.Added further the learned Counsel that the Labour Court has not taken into consideration the fact that before filing the claim petitions, there should be an adjudication made in respect of the claims made by the workmen, but not done so; that under the circumstances, all these claim petitions should have been dismissed at the threshold; but, not done so; that out of the respondents 2 to 176, 56 workers have already come out on V.R.S.; and that their claims have already been settled.

8.The learned Counsel would further add that in the instant case, what has been agitated by the workmen is the claim for overtime wages and not overtime allowances; that the Labour Court has not considered any one of the above aspects of the matter, but has passed the order, and hence, the order of the Labour Court has got to be set aside.

9.Contrary to the above contentions, the learned Counsel for the respondents 2 to 176 would submit that in the instant case, the first contention put forth by the learned Counsel for the petitioner that all these workmen are coming under the Hostel Management was against the terms and conditions and also the available documentary evidence. The learned Counsel took the Court to the different documents available and would submit that Ex.P36 is the terms of employment and conditions of service of the employees wherein it has been clearly stated that the supervision of the Hostel Management is done by a body constituted by the Director of I.I.T.

10.The learned Counsel would further add that the wages of the hostel employees were also paid by the I.I.T., Madras; that the same is also evident from Exs.P47 and P48 series; that the Director of the Institute is the Appellate Authority for disciplinary action taken against the employees of the Hostel Management which would clearly establish that the Director was having ultimate control over the Hostel Management through the Assistant Registrar and the Wardens of the hostels; that further, Ex.P48 series are the payment vouchers wherein it is clearly found that the entire payment of wages is made by the I.I.T. directly to the respondents 2 to 176; that further Ex.P59 series are the relieving orders which were issued to the employees of the hostel, wherein the Assistant Registrar has signed; that under the circumstances, the appointment, the supervision, payment of wages, control, etc., are all actually in the hands of the I.I.T., and thus, it would be futile on the part of the petitioner to put forth the contention that it has nothing to do with the Hostel Management.

11.The learned Counsel would further add that it is true that originally, a writ petition was filed and withdrawn; that the said writ petition was filed only as to the wages and not in respect of the allowances; that another writ petition was filed by the I.I.T. seeking a writ of prohibition against the department which was one in respect of the payment of provident fund; that the same has nothing to do; and that though it has been held by this Court that the employees were not the employees of the I.I.T., but of the Hostel Management, it would not be binding on the respondents 2 to 176 since they were not parties to that proceedings.

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12.The learned Counsel would further submit that in the instant case, the contention put forth by the petitioner's side that in order to file the claim petitions, earlier adjudication is necessary is not correct because in order to exercise the powers under Sec.33(C)(2) of the Industrial Disputes Act, either there should be prior adjudication or the rights to which they are entitled, should be available; that in the case on hand, they have got the source and right to which they are entitled; that for the same, they can well maintain the claim petitions before the Labour Court, which they have done; and that the Labour Court elaborately considered the matter and passed orders, which cannot be challenged.

13.Added further the learned Counsel that even if the contention of the petitioner's side that 56 of the employees have already come out on V.R.S. is true, they can maintain the claim petitions as per the settled position of law; that even a retired workman can maintain an application for the payment of wages; and that under the circumstances, the contentions of the petitioner's side have got to be rejected, and writ petition be dismissed.

14.The Court paid its anxious consideration on the submissions made.

15.It is not in controversy that all these respondents 2 to 176 were employed in the Hostel. According to the learned Counsel for the petitioner, they are all employees under the Hostel Management, and the I.I.T. has nothing to do with the same. As rightly pointed out by the learned Counsel for the respondents 2 to 176, the evidence recorded by the Labour Court, would indicate that the contentions put forth by the petitioner's side that they are the employees of the Hostel Management cannot be accepted. There is evidence under Ex.P36 to show that the supervision of the Hostel Management was done by a body constituted by the Director of the I.I.T., and further, payment of wages have been made under Exs.P47 and P48 series, to the employees, who are the respondents 2 to 176 herein, directly by the I.I.T. Thus, the documentary evidence would indicate that the wages of the hostel staff were also paid by the I.I.T. Further, in the instant case, as could be seen from the available materials and as pointed out by the Labour Court, the appointment, terms and conditions of the hostel staff, control, supervision and payment of wages are made by the I.I.T. Hence, the first contention put forth by the petitioner's side that they have nothing to do with those employees cannot be countenanced.

16.Now, the contention put forth by the learned Counsel for the petitioner is that originally, there was a writ petition filed by the Association, and it was also held by the Division Bench of this Court in a writ appeal that the hostel employees were not employees of the I.I.T. Now, at this juncture, it is pertinent to point out that no material is available to indicate that the respondents 2 to 176 who call themselves as employees of the I.I.T., were actually parties to that proceedings, and under the circumstances, this contention cannot be countenanced.

17.Further, it is to be pointed out that though the above contentions put forth by the petitioner's side cannot be accepted, this Court is of the considered opinion that the claim petitions filed before the Labour Court, were not at all maintainable for two reasons. Firstly, all these

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claim petitions were made directly before the Labour Court under Sec.33(C)(2) of the Industrial Disputes Act. They were all taken up for consideration. Now, at this juncture, it has got to be pointed out that in order to exercise the powers of the Labour Court under Sec.33(C)(2) of the Act, there should have been a prior adjudication. It remains to be stated that the Labour Court while exercising its powers under Sec.33(C)(2) of the Act, is functioning as an Executing Court. In the absence of any adjudication already made by a competent authority, no question of maintaining the claim petitions would arise. This Court is of the opinion that the two decisions relied on by the learned Counsel for the petitioner and reported in 2006 (3) SCALE 296 (UNION OF INDIA AND ANOTHER V. KANKUBEN (DEAD) BY LRS. AND OTHERS) and in 2005 (2) LLN 823 (SPECIAL OFFICER, VELLORE COOPERATIVE SUGAR MILLS V. PRESIDING OFFICER, LABOUR COURT, VELLORE), are applicable to the present facts of the case. In the decision reported in 2006 (3) SCALE 296, it has been clearly found that the respondents workmen made claims of overtime allowance which, according to them, was payable in view of 'on and off duty' for taking out and bringing in locomotives from the shed as was required to be done for the purpose of operating them at and from different stations. Further, the Apex Court has held in that decision that in the absence of any finding already given by a competent authority, there is no question of maintaining the petitions before the Labour Court that would arise. Apart from that, the First Bench of this Court had an occasion to consider the question and rendered a decision reported in 2005 (2) LLN 823, wherein it has been held that the right to benefit must be a pre-existing right, that is to say, one which has already been adjudicated upon or provided for under a statute or settlement. In the instant case, all the claim petitions have been directly made and no adjudication was previously done by any authority to make or maintain those petitions.

18.Secondly, it is not in controversy that originally, both times, conciliation was made; but, failure reports were submitted to the Government. Further, in respect of the conciliation report filed on 26.4.1999, the Government passed the order referring two issues for adjudication. There was also a separate order passed by the Government, wherein it has been clearly stated that the workmen had not pressed the issue of overtime wages, and therefore, that issue was not referred. Once such an order following the failure report was passed by the Government wherein it is also clearly recorded that they have not pressed the demand for overtime wages, even without challenging the same, they cannot bring forth claim petitions before the Labour Court as one done by them in the instant case. An occasion came before the Apex Court to consider the question that in a given case where the Government has refused to refer the dispute for adjudication, whether the workmen can directly bring a dispute before the Court for making a claim. An answer was given by the Supreme Court in B.S. BHARTI V. IBP CO. LTD. ((2004) 7 SUPREME COURT CASES 550), wherein it has been held that the proper remedy for the aggrieved party was to challenge the Government's refusal by a writ petition and not otherwise. In the case on hand, it is an admitted fact that the failure report was actually placed in the hands of the Government, which was not referred to as a dispute. In such circumstances, the only remedy available was to make a writ petition before the Court challenging that order of the State and not otherwise, or by way of making a claim petition before the Labour Court.

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19.For the above two grounds, this Court is of the considered opinion that the Labour Court should have dismissed the claim petitions, but not done so. Under the circumstances, the Court has to necessarily set aside the order of the Labour Court. Accordingly, it is set aside. The order passed above, will not stand in the way of the respondents 2 to 176 getting their appropriate remedy before the appropriate forum if they are so advised.

20.In the result, this writ petition is, accordingly, ordered. No costs. Consequently, connected MPs are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nsv/

To:
The Presiding Officer
Principal Labour Court
Chennai

+ 1 CC To Mr.K.Shanmugakani, Advocate SR NO.61708

+ 1 CC To Mr. R.Parthiban, Advocate SR NO.61727

WP No.49741 of 2006

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